

24. (New) A method for the treatment of the skin of a consumer consisting essentially of the steps of:

a) applying to the skin a first composition comprising an effective amount of an acid suitable as a skin renewing acid in a cosmetically acceptable vehicle, wherein the pH of the first composition is between about 2.5 and about 4; and

b) neutralizing said first composition by applying to the skin a second composition comprising an alkaline agent suitable for use in a skin care composition, and from about 0.1 to about 10% of at least one surfactant/emulsifying agent in a cosmetically acceptable vehicle, wherein the pH of the second composition is greater than about 7, and the first composition and the second composition are not rinsed off of the skin, wherein the first composition and the second composition are each applied with a pad.

REMARKS

Reconsideration of the present application is respectfully requested in view of the preceding amendments and for the following reasons.

The Patent Office has required restriction between Applicant's group I claims (1-9) directed to a composition and Applicant's group II claims (10-23) directed to a kit comprising a first and second composition and a method of treating skin by applying the first and second compositions (Action, page 2). Applicant confirms the provisional election with traverse to prosecute group II claims (10-23). Election is made with traverse because even though the group I and group II claims may be patentably distinct, Applicant asserts that the claims are sufficiently related to be properly presented in a single application. Moreover, the Patent Office indicates that both groups of claims are classified in the same class and subclass, *i.e.* class 424, subclass 401 (Action, page 2). Accordingly, it is respectfully asserted that search and examination of all claims in a single application would not present an undue burden. In view of the foregoing, reconsideration and withdrawal of the restriction requirement is respectfully requested.

In the Action, claims 10-23 were rejected under 35 U.S.C. § 112, first paragraph, as not being enabled by the specification. In particular, the Patent Office alleges that the specification, while being enabling for alpha hydroxy acids, beta hydroxy acids and

trichloroacetic acid, does not reasonably provide enablement for a "skin renewing acid." According to the Patent Office, the specification is only enabling for such acids "suitable" as skin renewing acids in the skin care composition (Action, page 3, ¶6).

In this § 112 rejection, the Patent Office further alleges that the specification, while being enabling for sodium bicarbonate and sodium hydroxide, does not reasonably provide enablement for all alkaline agents. According to the Patent Office, there are numerous alkaline agents, not all of which are compatible with application to the skin. The Patent Office also asserts that the specification, while being enabling for 0.1-5% of an alpha hydroxy acid, beta hydroxy acid or trichloroacetic acid, does not reasonably provide enablement for an unspecified amount of these acids (Action, pages 3-4, ¶¶7-8).

Applicant respectfully traverses the foregoing rejection and asserts that these claims are properly enabled by the specification. For instance, Applicant sets forth numerous examples of suitable acids at, *e.g.*, pages 5-6 of the specification. Moreover, Applicant specifies at pages 8-9 of the specification that sodium hydroxide or other alkaline agents may be used to adjust the pH in place of sodium bicarbonate.

In the interest of advancing the prosecution of the application, however, independent claims 10 and 16 have been clarified to further recite "an effective amount of an acid suitable as a skin renewing acid in a cosmetically acceptable vehicle", as well as "an alkaline agent suitable for use in a skin care composition," as supported by the specification at, for instance, pages 5 and 8-9 and in the examples.

In view of the foregoing, it is respectfully asserted that the specification enables one of ordinary skill in the art to make Applicant's invention commensurate in scope with the present claims and thus the rejection under 35 U.S.C. § 112 should be withdrawn.

Claims 10-21 were then rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,720,949 to Davis ("Davis") and claims 21-22 were rejected under 35 U.S.C. § 103(a) as being obvious over Davis. Similarly, claim 22 was rejected under 35 U.S.C. § 103(a) as being obvious over Davis in view of Condensed Chemical Dictionary, 10th Ed. to Hawley ("Hawley") (Action, page 5, ¶11 to page 7, ¶15).

Applicant respectfully traverses the foregoing rejection and asserts that the afore-cited references, whether viewed alone or in combination, neither disclose nor suggest Applicant's presently claimed invention for the following reasons.

As admitted by the Patent Office at page 5 of the Action, Davis discloses a "cosmetic mask." Davis also particularly teaches that this "mask" must be subsequently removed from the skin: "After a time the residue is removed from the skin of the user by means of a scraper or cloth" (Col. 1, lines 35-49 of Davis).

Davis further teaches that a suitable first composition is a cream comprising, in part, a thickening agent effective to provide a viscosity of from about 50,000 to about 1 million cps at 25°C and a suitable second composition is a gel comprising, in part, a thickening agent effective to provide a viscosity of from about 25,000 to about 500,000 cps at 25°C (Col. 3, lines 30-66 of Davis) and that the combined first and second compositions comprising the cosmetic mask product are maintained in contact with the skin for up to about 30 minutes, preferably for about 5 to 15 minutes. Thereafter the residue is removed by means of a cloth or scraper as is known in the art. The face of the consumer may then be washed with a gentle soap composition. (Col. 11, line 66-Col. 12, line 5).

It is respectfully asserted that Davis teaches away from the presently claimed invention. That is, in Applicant's claimed method of treatment and kit for the treatment of skin, the first and second compositions are not rinsed off of the skin. As described in Applicant's specification at page 11:

The formulation of step 1 is applied all over the area of the skin to be treated, preferably in a circular motion, and allowed to dry for approximately 3 minutes. The formulation of step 2 is then applied in the same manner and allowed to dry completely. After step 2 is dried, moisturizer, sunscreen and/or makeup may be applied as usual. Neither formulation should be rinsed off of the skin.

The presently claimed invention is not a cosmetic mask to be subsequently scraped off of the skin and it respectfully asserted that one skilled in the art seeking to develop Applicant's particular method or kit would not even be motivated to look to Davis for

guidance.

In further contrast to the presently claimed invention, Davis teaches that this mask is "foamable": "The mixed composition is maintained in contact with the skin for a predetermined period of time, but at least until a foaming action has occurred as a result of a reaction between the effervescent agent (preferably contained in the first composition) and the acid component (preferably contained in the second composition)." (Col. 2, lines 49-52 of Davis). After this foaming action occurs and after a time, the residue is removed by the afore-described scraper or cloth (Col. 1, lines 42-49 of Davis).

Significantly, Applicant's claimed method for treatment and kit for the treatment of skin do not employ such a "foamable cosmetic mask" as that of Davis. Nor does such a "foamable cosmetic mask" even remotely suggest Applicant's claimed method for treatment and kit for the treatment of skin for the foregoing reasons.

Additionally, the superior and unexpected results of the presently claimed invention should not be ignored. For instance, as disclosed in Applicant's specification at page 11, line 20 to page 12, line 5:

As a result of the rapid change in pH when the composition of Step 1 is neutralized by the composition of Step 2, there is an increase in vasopermeability causing slight edema in the skin, which helps reduce the appearance of lines and gives the skin a healthy appearance....The neutralization step potentiates the anti-aging and anti-acne effects of the acid step, which are further potentiated by the ability of the consumer to use the present invention as often as once a day, and by the conversion of the acid(s) to their salt form, which are also dermatologically active.

The compositions of the claimed invention are useful in reducing fine wrinkles and lines, reducing pore size, exfoliating the skin, eliminating acne, toning the skin, enhancing the skin's radiancy, and providing softer, smoother skin with a more uniform appearance.

It is further respectfully asserted that the addition of Hawley, which was cited by the Patent Office as merely disclosing polysorbate-20, does not cure the shortcomings Davis. In particular, the Patent Office has pointed to no teaching, suggestion or motivation, which

would lead one of ordinary skill in the art to combine and modify these references in an attempt to arrive at the presently claimed invention.

New claims 24-44 have also been added by amendment herewith to specify additional detailed features of Applicant's method for treatment and kit for the treatment of skin. These claims have been added without introducing any new subject matter into the application. In particular, support for the newly added claims is provided in the specification, for example, at pages 5-6, 8-9 and in the examples.

In view of the foregoing amendments and remarks, the application is believed to be in condition for immediate allowance and such favorable action is earnestly solicited. The Examiner is invited to telephone the undersigned at 212-425-7200 if it is believed that a discussion would help to advance the prosecution of the application.

Respectfully submitted,
KENYON & KENYON

Dated: Dec 19, 2000

Christine M. Wilkes
Christine M. Wilkes
(Reg. No. 37,967)

KENYON & KENYON
One Broadway
New York, N.Y. 10004
(212) 425-7200 (telephone)
(212) 425-5288 (facsimile)